IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION CIVIL NO.: 5:10CV173-RLV

MATTHEW J. LACEY and WIFE,)
MELISSA A. LACEY)
a/k/a MELISSA A. HEINZE)
a/k/a MELISSA A. SMITH,)
Plaintiffs,)
v.) Memorandum and Order
EMC MORTGAGE CORPORATION,	<i>)</i>)
a Delaware Corporation; BANK OF AMERICA,)
NATIONAL ASSOCIATION, as successor by)
merger to LaSalle Bank National Association,)
as Trustee for certificate holders of Bear Stearns)
Asset Backed Securities, Inc., Asset Backed	
Certificates, Series 2004-1 (Holder))
DAVID S. SIMPSON, (Substitute Trustee);)
DOES 1 through 100, inclusive;)
Defendants.)
)

THIS MATTER is before the Court on Defendants' "Motion ... to Compel Arbitration and Dismiss or Stay Litigation," filed January 26, 2011. (Documents ##16, 17, 20, 26)

Pursuant to 28 U.S.C. § 636(b)(1)(B), United States Magistrate Judge David S. Cayer was designated to consider Defendants' motion and recommend disposition. In a thorough and well-reasoned opinion filed April 7, 2011, the Magistrate Judge recommended that Defendants' "Motion ... to Compel Arbitration and Dismiss or Stay Litigation" be granted such that the instant civil case will be stayed pending arbitration proceedings, and denied to the extent Defendants seek dismissal. (M & R at 1, 10) The time for filing objections has since passed, 28 U.S.C. §636(b)(1)(C), and no objections have been filed by either party in this matter.

Because neither party filed specific objections, *de novo* review is not required. *See* <u>Diamond v. Colonial Life</u>, 416 F.3d 310, 315-16 (4th Cir.2005) (litigant's failure to object to Memorandum and Recommendation constitutes a waiver of the right to *de novo* review by the

district court). However, after a careful review of the Magistrate Judge's Memorandum & Recommendation, the Court finds that his findings of fact are supported by the record and his conclusions of law are consistent with and well supported by current case law. *See* Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982) (holding that only a careful review is required in considering a memorandum and recommendation absent specific objections.) Accordingly, the Court hereby accepts the Memorandum & Recommendation of the Magistrate Judge and adopts it as the final decision of this Court for all purposes relating to this case.

IT IS, THEREFORE, ORDERED that Defendants' Motion to Compel Arbitration and Stay Litigation is hereby GRANTED. (Document #16) Accordingly, this matter shall be STAYED pending the parties' submission of their dispute to binding arbitration pursuant to the provisions of the Arbitration Provision, as modified by the parties, concerning arbitrating by AAA rules but not before the AAA. The parties shall report to the Court within thirty (30) days of issuance of an arbitration award or other resolution.

IT IS FURTHER ORDERED that Defendants' Alternative Motion to Dismiss Plaintiffs' Amended Complaint is **DENIED**. (Document #16) Defendants' original Motion to Dismiss, filed November 18, 2010 (Document #4), is rendered **MOOT** by Plaintiffs' Amended Complaint, filed December 23, 2010.¹ (Document #8)

Signed: May 23, 2011

Richard L. Voorhees United States District Judge

¹ The Deputy Clerk is likewise directed to term the November 18, 2010 Motion.